

UK MINISTERS ACTING IN DEVOLVED AREAS

83 - The Nutrition (Amendment) (EU Exit) Regulations 2019

Laid in the UK Parliament: 8 February 2019

Sifting

Subject to sifting in UK Parliament?	No
Procedure:	Affirmative
Date of consideration by the House of Commons European Statutory Instruments Committee	N/A
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	Not known
Date sifting period ends in UK Parliament	N/A
Written statement under SO 30C:	Paper 11
SICM under SO 30A (because amends primary legislation)	Not required

Scrutiny procedure

Outcome of sifting	N/A
Procedure	Affirmative
Date of consideration by the Joint Committee on Statutory Instruments	Not known
Date of consideration by the House of Commons Statutory Instruments Committee	Not known
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	Not known

Commentary

These regulations are proposed to be made by the UK Government pursuant to sections 8(1) and 23 of, and paragraph 21 of Schedule 7 to, of the European Union (Withdrawal) Act 2018.

The purpose of this instrument is to remedy deficiencies in UK legislation relating to nutrition, arising from the withdrawal of the UK from the European Union ("EU"), in the event that the UK leaves without a deal having been agreed. This instrument amends existing domestic, and retained EU, legislation as well as revoking some pieces of related EU tertiary legislation which will no longer have any application to the UK after withdrawal.

The subject areas covered by this nutrition legislation are: nutrition and health claims made on food; the addition of vitamins, minerals and certain other substances to foods; composition and labelling of food supplements; the composition and labelling of food for specific groups; and the sale of products containing Kava-kava.

Legal Advisers make the following comments in relation to the Welsh Government's statement dated 8 February 2019 regarding the effect of these regulations:

1. These regulations were originally laid on 16 January 2019 but subsequently withdrawn. A new version of the regulations were laid on 17 January 2019. This version was later withdrawn, and the regulations were laid for a third time on 30 January 2019.
2. The original Welsh Government written statement was laid on 18 January 2019 but seemed to refer to the original version of the regulations. The Committee considered the statement on 28 January 2019 and agreed to write to the Minister to seek clarification on certain issues, including whether the Welsh Government had provided consent to the re-laid regulations, the Welsh Government's role, if any, in the re-drafting of the regulations, any effect on the Assembly's legislative competence, and the 11 day consultation period.
3. The Welsh Government written statement was amended and re-issued on 29 January 2019. As the re-issued statement merely amended the hyperlink to refer to the updated regulations, without providing any additional commentary, the Committee considered this unsatisfactory. This was made clear in the Committee's letter of 31 January 2019 to the Minister, which also raised the issues previously considered.
4. A response was received from the Minister for Finance and Trefnydd on 7 February 2019. The Welsh Government written statement was also re-issued on 8 February 2019.
5. The current written statement, like previous versions, states the following:

"While these Regulations contain provision which enable the Welsh Ministers to exercise functions in relation to Wales without encumbrance, they also contain provision whereby the Welsh Ministers could provide consent to the Secretary of State to exercise functions in relation to Wales on their behalf. Functions transferred to the Secretary of State with consent would constitute functions of a Minister of the Crown for the purposes of Schedule 7B to the Government of Wales Act 2006. This therefore may be a relevant consideration in the context of the Assembly's competence to legislate in the future in the subject areas outlined in the summary to this report."

6. Clarification was sought by the Committee on this point. In her response of 7 February 2019 to the Committee's letter of 31 January

2019, the Minister referred to her response to queries raised in relation to the Plant Breeders' Rights (Amendment etc.) (EU Exit) Regulations 2018. Here, the Minister states that:

“Welsh Government officials are in contact with the Wales Office about the unintended restrictions on the Assembly’s competence created by powers conferred in EU Exit SIs and other legislation, which engages paragraphs 8, 10 and 11 of Schedule 7B of the Government of Wales Act. Officials are examining the issue in detail and considering how it can best be resolved. The Welsh Government will keep the National Assembly, including the Constitutional and Legislative Affairs Committee, informed about the progress of these discussions.”

7. In relation to the drafting of the Welsh Government’s written statement dated 8 February 2019, the following EU law has been included in the list of tertiary legislation subject to minor and technical amendment, when in reality they are being revoked by this instrument:

- 2013/63/EU: Commission Implementing Decision adopting guidelines for the implementation of specific conditions for health claims laid down in Article 10 of Regulation (EC) No 1924/2006 of the European Parliament and of the Council;
- Commission Implementing Regulation (EU) No 489/2012 establishing implementing rules for the application of Article 16 of Regulation (EC) No 1925/2006 of the European Parliament and of the Council on the addition of vitamins and minerals and of certain other substances to foods.

Save for the points mentioned above, the above summary and the content of the Explanatory Memorandum to these Regulations confirm their effect.

Legal Advisers do not consider that any significant issues arise under paragraph 8 of the Memorandum on the European Union (Withdrawal) Bill and the Establishment of Common Frameworks in relation to these Regulations.